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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re D.O., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. D.O., Defendant and Appellant.	A147243 (Contra Costa County Super. Ct. No. J15-00334)

Following a contested jurisdictional hearing, the juvenile court sustained an allegation that D.O. possessed a deadly weapon, a knife, on school grounds. D.O. was declared a ward of the court and placed on formal juvenile probation. One of the probation conditions requires D.O. to submit "any cell phone or other electronic device in his possession, including access codes, limited, however, to not include any access by the police or probation through the cell phone or electronic device to any website, internet site or social medial site." Defendant now appeals arguing the condition is not reasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*), and is unconstitutionally overbroad. We conclude the condition is reasonable but overbroad, and we modify it accordingly.

I. BACKGROUND

On April 22, 2014, Officer Andrew Barbara, a school resource officer at De Anza High School, received a report that a student "had a knife on campus on the football

field." When Barbara arrived at the field, the student was identified as D.O. After D.O. consented to a search, Barbara found a knife in his pants pocket. The blade was three and three-quarters inches long. D.O. waived his *Miranda*[1] rights, and told Barbara he brought the knife to school "for protection." D.O. later told his probation officer he had the knife because he had gone fishing the day before and accidentally left the knife in his pants, which he wore again the next day. D.O. also admitted he had experimented with marijuana, but said he had not used the substance in several months.

On April 2, 2015, the Contra Costa County District Attorney filed a petition under Welfare and Institutions Code section 602, subdivision (a) seeking to have D.O. declared a ward of the court. The petition alleged one misdemeanor count of possessing a weapon on school grounds. (Pen. Code, § 626.10, subd. (a).) After a contested jurisdictional hearing, the juvenile court sustained the count. The court then declared D.O. a ward of the court and placed him on probation.

At a November 17, 2015 hearing, the juvenile court orally imposed a probation search condition: "He will submit his person, any property or vehicle under his control, any cell phone or other electronic device in his possession, including access codes, limited, however, to not include any access by the police or probation through the cell phone or electronic device to any website, internet site or social media site."[2]

Defense counsel objected to the portion of the condition pertaining to electronic devices, arguing it was contrary to Division Two's recent decision in *In re Erica R.* (2015) 240 Cal.App.4th 907 (*Erica R.*) and Division Three's decision in *In re Malik J.* (2015) 240 Cal.App.4th 896. Defense counsel also argued: "There's nothing here to support factually that term on probation." The court overruled the objections stating: "Given the report and the involvement of the minor at a school and the extreme proliferation of cell phones that they are so involved in the daily life of children, in order

[1] *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

[2] The disposition report sets forth an almost identical probation condition, but adds the following language at the end: "to search and seizure by any peace officer at any time of the day or night, with or without a warrant."

for Probation to actually monitor his compliance with these rules, I think it's important for them to have access to the contacts he has in his cell phone." The court also expressed concern the phone could be used to acquire marijuana.

II. DISCUSSION

A. *The Electronics Search Condition Is Reasonable*

As he did below, D.O. asserts the electronics search condition is unreasonable under *Lent*, *supra*, 15 Cal.3d 481.[3] We disagree.

The juvenile court "may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).) The court has "broad discretion to fashion conditions of probation" (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5), although "every juvenile probation condition must be made to fit the circumstances and the minor" (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203). Probation conditions are reviewed for an abuse of discretion. (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).)

A trial court's discretion to determine probation conditions, "although broad, is nonetheless subject to the limitation that [such] conditions must be 'reasonable.' " (*People v. Beal* (1997) 60 Cal.App.4th 84, 86.) Under our Supreme Court's decision in *Lent*, a condition is valid unless it " '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' " (*Lent*, *supra*, 15 Cal.3d at p. 486.) "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as

[3] The Attorney General contends D.O. forfeited this argument because he only objected to the electronics search condition based on privacy concerns. But D.O.'s objections were broader than that, and encompassed the reasonableness of the condition.

the condition is reasonably related to preventing future criminality." (*Olguin, supra,* 45 Cal.4th at pp. 379–380.)

We find the third prong required to invalidate a probation condition is not met in this case. As we explained in *In re P.O.* (2016) 246 Cal.App.4th 288 (*P.O.*), which involved a challenge to a substantially similar electronics search condition: "Under *Olguin, supra,* 45 Cal.4th 375, a probation condition that enables probation officers 'to supervise [their] charges effectively is . . . "reasonably related to future criminality." ' [Citation.] This is true 'even if [the] condition . . . has no relationship to the crime of which a defendant was convicted.' [Citation.] Here, the condition reasonably relates to enabling the effective supervision of [the minor's] compliance with other probation conditions. Specifically, the condition enables peace officers to review [the minor's] electronic activity for indications that [the minor] has drugs or is otherwise engaged in activity in violation of his probation." (*P.O.*, at p. 295.)

As defendant points out, a number of published decisions have reached contrary conclusions as to the validity of electronic search conditions. (See, e.g., *Erica R.*, *supra*, 240 Cal.App.4th 907; *In re J.B.* (2015) 242 Cal.App.4th 749.) For example, in *Erica R.*, Division Two struck an electronics search condition where there was no evidence suggesting the minor, who was convicted of misdemeanor possession of ecstasy, ever used her cell phone to negotiate the purchase or sale of an illegal substance. (*Erica R.*, at pp. 912–913.) We nonetheless adhere to our opinion in *P.O.*, in which we held a probation condition need not relate to the crime for which a defendant was convicted so long as the condition enables probation officers to effectively supervise their charges. (*P.O., supra,* 246 Cal.App.4th at p. 295.)

Here, the electronic search condition would serve such a purpose. D.O. was found with a knife on school property, and he admitted to using marijuana. D.O. could use his cell phone or other electronic devices to acquire drugs in the future, or to inform others about his possession of weapons. Thus, a search of D.O.'s electronic devices may help his probation officers to effectively supervise him and determine whether he is complying with the terms of his probation.

B. ***The Electronics Search Condition Is Overbroad***

Any probation condition that imposes limits on a minor's constitutional rights must be tailored to the purpose of the condition to avoid unconstitutional overbreadth. (*P.O.*, *supra*, 246 Cal.App.4th at p. 297.) In *P.O.*, we found the electronics search condition was overbroad because it permitted review of all sorts of private information that was highly unlikely to shed any light on whether the minor was complying with the conditions of his probation. (*Id.* at p. 298.)

The search condition in this case is distinguishable because, unlike in *P.O.*, it does not require D.O. to provide access "through the cell phone or electronic device to any website, internet site or social media site."[4] Despite this additional limitation, we find the electronic condition remains overbroad. As is, the condition allows probation to access a variety of private information on defendant's electronic devices which is unlikely to reveal whether D.O. is engaged in criminal activity or otherwise complying with the conditions of his probation. For example, the condition would allow a probation officer to look at mobile apps with private information about D.O.'s health and personal finances.

D.O. argues the term "electronic devices" is so broad it could encompass computers, tablets, and even streaming video devices or e-book readers. But we see no reason the search condition should be limited to D.O.'s cell phone, especially since he could regularly communicate via email or text over a laptop and a variety of other electronic devices. Such communications could be relevant to determining whether D.O. is complying with the terms of his probation. Given the wide range of functionalities now offered by all kinds of electronic devices, we decline to limit the types of devices subject to search.

For these reasons we hold the electronic search condition must be modified to limit authorization of warrantless searches of D.O.'s electronic devices to media of

[4] We adhere to the limitation set forth by the trial court concerning social sites, but we express no opinion as to whether such a limitation is necessary to prevent the probation condition from being overbroad.

communication reasonably likely to reveal whether he is in compliance with the terms of his probation.

III. DISPOSITION

The search condition set forth at the November 17, 2015 hearing is affirmed as modified. The condition is modified to read: "Submit your person and any vehicle or property under your control to search by a probation officer or a peace officer, with or without a search warrant, at any time of the day or night. Submit cell phone or other electronic devices under your control to a search of any medium of communication reasonably likely to reveal whether you are complying with the terms of your probation, with or without a search warrant, at any time of the day or night. Such media of communication include text messages, voicemail messages, photographs, and e-mail accounts, but do not include Web sites, Internet sites, or social media sites."

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Margulies, J.

We concur:

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Humes, P.J.

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Dondero, J.

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